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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PETER BOLGAR,

Plaintiff and Appellant,

v.

SCHRIMMER-CAVANAGH INSURANCE  
AGENCY, INC.,

Defendant and Respondent.

B205702

(Super. Ct. No. BC 372736)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Mary Ann Murphy, Judge. Affirmed.

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Peter Bolgar, in pro. per., for Plaintiff and Appellant.

Michael D. Davis for Defendant and Respondent.  
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Peter Bolgar filed suit against three defendants, including respondent Schrimmer-Cavanagh Insurance Agency, Inc. (Schrimmer-Cavanagh). The trial court dismissed Schrimmer-Cavanagh because Bolgar failed to provide proper proof of service of the summons and complaint. Bolgar appeals, and we affirm.

### BACKGROUND

Bolgar, appearing in propria persona, filed his original complaint against Schrimmer-Cavanagh and two other defendants on June 14, 2007. Bolgar later filed a purported proof of service of the summons and complaint on all three defendants.<sup>1</sup>

On July 30, 2007, Bolgar moved for entry of judgment by default against Schrimmer-Cavanagh. According to the trial court's docket, on August 14, 2007, Schrimmer-Cavanagh moved to quash service of summons.

As reflected in the reporter's transcript, on September 5, 2007, the trial court denied Bolgar's motion for entry of default judgment because the proof of service of the summons and complaint was defective and Schrimmer-Cavanagh claimed that it had never been properly served. According to the trial court's docket, on September 20, 2007, the court granted Schrimmer-Cavanagh's motion to quash.

At some point the court issued an order to show cause regarding service on all defendants. On November 27, 2007, the court conducted a hearing on the order to show cause, ruled that Schrimmer-Cavanagh had not been properly served, and dismissed Schrimmer-Cavanagh.<sup>2</sup> The next day, however, the court vacated that order for reasons not reflected in the record before us.

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<sup>1</sup> The purported proof of service displays a court file stamp dated June 25, 2007, but Bolgar contends that the date is incorrect.

<sup>2</sup> The docket reflects that some party filed a second motion to quash service of summons on November 1, 2007. Schrimmer-Cavanagh states in its respondent's brief that it filed the second motion to quash, which was scheduled to be heard on December 5, 2007, but was taken off calendar as moot after the court dismissed Schrimmer-Cavanagh at the November 27 hearing on the order to show cause.

On November 30, 2007, Bolgar filed a motion for reconsideration of the ruling regarding service on Schrimmer-Cavanagh. At some point the court issued another order to show cause regarding service on Schrimmer-Cavanagh. On December 19, 2007, the court conducted a hearing on both the order to show cause and Bolgar's motion for reconsideration. The court denied the motion, again concluded that Schrimmer-Cavanagh had not been properly served, and again dismissed Schrimmer-Cavanagh. Bolgar appealed.<sup>3</sup>

### DISCUSSION

We have reviewed the entire record on appeal, and it contains no valid proof of service of summons on Schrimmer-Cavanagh. We therefore conclude that Bolgar has not shown that the trial court erred in dismissing Schrimmer-Cavanagh.

Pages 28 and 88 of the clerk's transcript are purported proofs of service of summons on Schrimmer-Cavanagh, but each is defective. On each form, the server checked the box for "personal service" but stated neither the date and time of the alleged service nor the name and capacity of the individual to whom the summons and complaint were allegedly delivered, in violation of Code of Civil Procedure section 417.10, subdivision (a). On each form, the server did not check the box for substituted service but did check certain subsidiary boxes pertaining to the manner of substituted service, suggesting that the server was claiming to have served Schrimmer-Cavanagh by substituted service. Again, however, the server stated neither the date and time of the alleged delivery of the summons and complaint nor the name and capacity of the person in whose presence the documents were allegedly left, in violation of Code of Civil Procedure section 417.10, subdivision (a). The purported proof of service on page 15 of the supplemental clerk's transcript suffers from the same defects. The record on appeal

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<sup>3</sup> At the hearing on December 19, 2007, the trial court entered a minute order dismissing Schrimmer-Cavanagh, but when Bolgar filed his notice of appeal the court had yet to enter a signed judgment of dismissal. We directed Bolgar to secure entry in the superior court of such a judgment, and we now treat the appeal as from that judgment. (*Maria D. v. Westec Residential Security, Inc.* (2000) 85 Cal.App.4th 125, 129, fn. 1.)

contains no other purported proofs of personal service or substituted service of the summons and complaint on Schrimmer-Cavanagh.

The only other permissible forms of service of the summons and complaint would be (1) by mail with acknowledgement of receipt or (2) by publication. (Code Civ. Proc., §§ 415.30, 415.50.) Service by mail with acknowledgement of receipt is complete when “a written acknowledgement of receipt of summons is executed” (*id.*, § 415.30, subd. (c)), but the record on appeal does not contain an executed acknowledgement of receipt. The record on appeal also contains no proof of service by publication (and no proof that the prerequisites for service by publication were satisfied). The record on appeal thus contains no evidence that the summons and complaint were served on Schrimmer-Cavanagh by mail with acknowledgement of receipt or by publication.

For all of the foregoing reasons, we conclude that Bolgar has not shown that the trial court erred by dismissing Schrimmer-Cavanagh.

#### DISPOSITION

The judgment is affirmed. Respondent shall recover its costs of appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

BAUER, J.\*

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\* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.